Supreme Court, U.S.
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docket no.:

Supreme Court of the United States

MOHAMMAD AYUB MUSHTAQ, an individual,
Petitioner,
v.
SUPERIOR COURT OF CALIFORNIA,
IN AND FOR THE COUNTY OF ORANGE,
Respondent;

SMART DIGITAL TECHNOLOGY, INC.,
Real Party in Interest.

On Petition for a Writ of Certiorari
to the Supreme Court of the State of California

PETITION FOR WRIT OF CERTIORARI

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PETITIONER IS MAKING A
SPECIAL APPEARANCE ONLY.

QUESTIONS PRESENTED FOR REVIEW

1. Is a non-resident's communication to an agency of the State of California, said communication being protected by the First Amendment of the Constitution of the United States, a sufficient "contact" to support the exercise of personal jurisdiction by the courts of California?

2. Where the service of a summons and complaint of a California civil action is attempted upon a non-resident in Pakistan, but not in the manner prescribed by the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, is that attempted service of process valid?

LIST OF ALL PARTIES TO THE PROCEEDING

SMART DIGITAL TECHNOLOGY, INC.
-Plaintiff/Real Party in Interest

MOHAMMAD AYUB MUSHTAQ
-Defendant/Petitioner (specially appearing only)

MIAN FARASAT MAQSOOD
-Defendant (no appearance entered)

IRFAN HAFEEZ CHOUDHARY
-Defendant (no appearance entered)

MAHAMMAD AHMED
-Defendant (no appearance entered)

RAJA QURESHI
-Defendant (not served with process)

SHAHAB SARKI
-Defendant (not served with process)

SUPERIOR COURT OF CALIFORNIA, IN AND FOR THE COUNTY OF ORANGE
-Respondent

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CITATIONS OF THE OFFICIAL AND UNOFFICIAL REPORTS

There are no official or unofficial reports of this case. The May 23, 2007 decision of the California Supreme Court (case no. S151839 -- see Appendix p.A-1), the April 5, 2007 decision of the California Court of Appeal, Fourth District, Division Three (case no. G038243 -- see Appendix p.A-2), and the October 26, 2006 ruling of the California Superior Court for the County of Orange (case no.: 05CC12183 -- see Appendix p.A-3) are all unpublished.

STATEMENT OF THE BASIS FOR JURISDICTION

The Order for which Petitioner is now seeking United States Supreme Court review was entered by the Supreme Court of the State of California on May 23, 2007. Pursuant to 28 U.S.C. § 1257(a), the U.S. Supreme Court has jurisdiction over the present petition for writ of certiorari in that the judgment or order in question is from the highest court of the State of California, and through this petition Petitioner is claiming rights, privileges or immunities arising under

the Constitution of the United States and a treaty to which the United States is a member nation.

Since Petitioner's petition was originally filed less than 90 days after the entry of the California Supreme Court's May 23, 2007 Order, and since this corrected petition is being filed in compliance with U.S. Supreme Court Rule 14.5, Petitioner is seeking a writ of certiorari in a timely manner pursuant to 28 U.S.C. §§ 2101(c) and 2104, and U.S. Supreme Court Rules 13.1 and 14.5. There was no rehearing in the California Supreme Court.

In the present case, the notifications described in U.S. Supreme Court Rule 29.4(b) and (c) are not required.

CONSTITUTIONAL PROVISIONS AND TREATIES INVOLVED

This petition involves the second paragraph of Article VI of the U.S. Constitution, which states:

> "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be

the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

It also involves the First Amendment to the U.S. Constitution, which states (in relevant part): "Congress shall make no law . . . abridging the freedom of speech . . . or the right of the people peaceably . . . to petition the Government for a redress of grievances."

This case also involves Section One of the 14th Amendment to the U.S. Constitution, which provides (in relevant part): "No State shall . . . deprive any person of life, liberty, or property, without due process of law . . . ."

This petition also involves Articles 1, 5 and 6 of the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, 20 U.S.T. 361, T.I.A.S. No. 6638, Nov. 15, 1965 (hereinafter "Hague Convention" or "Convention"). The provisions involved are lengthy, and their pertinent text is set out in the Appendix as permitted by U.S. Supreme Court Rule 14.1(f).

STATEMENT OF THE CASE

On May 21, 2005, Petitioner Mohammad Ayub Mushtaq ("Mushtaq" or "Petitioner") filed a complaint in the courts of Pakistan for specific performance of a contract that required the vendor to sell to Mushtaq certain real property in Pakistan for a total of 60,000,000 rupees, for which Mushtaq had already deposited approximately 15,000,000 rupees. (Petitioner's Lodgment of Exhibits ("PLE") pp.53-59) [1] The defendants in the Pakistani specific performance case are Shakila Ghazali ("Ghazali") of Anaheim, California and Amer Ali of Rowland Heights, California. (PLE p.53) Amer Ali has a brother named Aftab Ali, who is Ghazali's son-in-law. (PLE p.95) Ghazali, Aftab Ali and Amer Ali were also defendants in a pending criminal proceeding that was commenced in Pakistan in January 2005. (PLE p.154)

On June 11, 2005, Aftab Ali signed a counter-affidavit that was filed in the Pakistani specific performance case. (PLE pp.87-113) Aftab Ali's counter-affidavit stated that there was no contract for the sale of real property (PLE p.93), but that the money

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[1] See U.S. Supreme Court Rule 12.7, which allows references to the record before it is filed with this Court.

given by Mushtaq was for the purchase of shares of stock in Smart Digital Technology, Inc. ("SDTI"). (PLE pp.95-97) SDTI is a corporation organized and existing under the laws of the State of California (PLE p.4 ln.12-14), and doing business in California. (PLE p.2 ln.4) The counter-affidavit contains nothing in writing from Mushtaq mentioning the purchase of stock. Mushtaq later denied Aftab Ali's allegations. (PLE p.118)

In September 2005, Raja Qureshi ("Qureshi") submitted a "complaint" form on behalf of Mushtaq to the California Secretary of State Department of Corporations, identifying Ghazali, Aftab Ali, Amer Ali and SDTI, and merely making the California agency aware of the Pakistani specific performance case and the Pakistani criminal matter. (PLE pp.178-180) SDTI is not the accused in the Pakistani criminal case. (PLE pp.154-166) The California Department of Corporations has taken no action against SDTI. (PLE p.7 ln.15-17)

On November 15, 2005, SDTI, as the *sole* plaintiff, commenced this civil action in the California Superior Court for the County of Orange against Mushtaq, who resides in Karachi, Pakistan. (PLE p.2

ln.4) SDTI also named Qureshi and Shahab Sarki ("Sarki") as defendants, both of whom reside in Karachi, Pakistan, and who are attorneys for Mushtaq. (PLE p.2 ln.7-18) SDTI also named Mian Farasat Maqsood ("Maqsood"), who resides in Karachi, Pakistan, and is Mushtaq's business manager and attorney-in-fact. (PLE p.2 ln.10-13) SDTI also sued Irfan Hafeez Choudhary ("Choudhary") and Mahammad Ahmed ("Ahmed"), who are residents of Bhalwalphur, Pakistan and Lahore, Pakistan, respectively, and are "acting as witnesses for" Mushtaq. (PLE p.2 ln.19 through p.3 ln.3) SDTI's California suit seeks damages essentially on the claim that the September 2005 complaint given to the California Department of Corporations was a "trade libel." (PLE pp.1-18)

On April 4, 2006, the Pakistani court found that Mushtaq had established a "prima facie case" in the specific performance case (PLE p.120), and ordered that "Mr. Nazim Hussain Siddiqui, former Chief Justice of Pakistan is appointed as a Commissioner to record evidence of the parties concerned." (PLE p.121)

SDTI then filed proofs of service in the California case, saying that between the 20th and 25th of April

2006 in Karachi, Pakistan, Amer Ali "personally delivered" the summons and complaint to Mushtaq (PLE p.21), Maqsood (PLE p.23), Choudhary (PLE p.25) and Ahmed. (PLE p.27) [2] There is no evidence Mushtaq voluntarily accepted service.

In the California case, Mushtaq, making a special appearance only, [3] filed and served a motion to dismiss and to quash service for lack of jurisdiction and failure to serve summons and complaint. (PLE pp.30-122) [4] He submitted his declaration with the motion (PLE pp.44-47), and stated he is a Pakistani resident, and has never resided in California, nor ever done any business in California, nor owned any real or personal property in California. (PLE p.44 ln.11-16) He also stated that he has never consented to the jurisdiction of the State of California. (PLE p.47 ln.1) Among the

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[2] There is no indication that Qureshi or Sarki were ever served with process in the California case, nor that anyone was identified as a fictitiously-designated "Doe" defendant.

[3] In the U.S. Supreme Court, Petitioner is now making a special appearance only, as he also did at the appellate and supreme court levels in the California courts.

[4] Mushtaq also moved to dismiss on *forum non conveniens* grounds to allow the case to be refiled in Pakistan. (PLE pp.30-122) All six defendants in the California case are residents of Pakistan. (PLE p.2 ln.5 through p.3 ln.3) That motion was denied. (PLE p.295 ln.15-16, p.319 ln.4-5)

exhibits in support of the motion were the Pakistani specific performance complaint (PLE pp.53-81), Aftab Ali's counter-affidavit (PLE pp.82-114), and the April 4, 2006 decision of the Pakistani court. (PLE pp.115-122)

SDTI opposed (PLE pp.123-141), but *incorrectly* stated that Pakistan "is not a participating country in the Hague Convention." (PLE p.135 ln.16) SDTI submitted the declarations of Javid Baqal ("Baqal") (PLE pp.147-184), and Vishnu Reddy ("Reddy"). (PLE pp.187-207) [5] In its discussion of personal jurisdiction, SDTI did not assert a "general jurisdiction" argument.

Baqal said in his declaration that "I am serving as the President of" SDTI (as of October 10, 2006) (PLE p.148 ln.1-2, p.153 ln.7), and also discussed the contacts that SDTI has in Pakistan. (PLE p.151 ln.1-6) He also alleged that Mushtaq supposedly purchased 8,500 shares of SDTI stock in August 2004; that in April 2005 SDTI offered to "buy back" the stock (but the details of the "offer" were not explained); and that SDTI's corporate officers "shared confidential and sensitive information with the Defendants" (thus

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[5] Objections were sustained to the substantive portions of the declarations of Amer Ali (PLE pp.123-141, pp.280-282, pp.309-311), Ray Monfared (PLE pp.210-233, pp.283-284, pp.314-315), and Gurmeet Singh. (PLE pp.234-255, pp.282-283, pp.311-313) SDTI provided no declaration from either Ghazali or Aftab Ali.

breaching their fiduciary duties to SDTI). (PLE p.148) Although Baqal alleged that Mushtaq "made verbal threats to corporate officers in front of other employees and left the meeting abruptly" at SDTI's Placentia, California office, there is no indication of what the alleged "verbal threats" were or that any individual not employed by SDTI was present at that time. (PLE p.148 ln.16-18)

Baqal made other various vague, conclusory and speculative statements on "information and belief" in his declaration about things Mushtaq allegedly said, but did not identify the individual(s) who heard or read the alleged statements. (PLE p.147 ln.22-24, p.148 ln.24 through p.150 ln.2) Although Baqal's declaration attaches a copy of the Pakistani criminal complaint, Baqal did not refer to anything showing how SDTI will be penalized in that case. (PLE p.150 ln.3-8, pp.154-166) Baqal also makes reference to the complaint filed with the California Department of Corporations, but no other allegedly "libelous" publication. (PLE p.150 ln.16-24, pp.177-181)

Reddy said he is the president of Reddy & Reddy, Inc.; that his company entered into a services agreement with SDTI in September 2005; but that

based on the alleged receipt of "unsolicited information" from Mushtaq in early 2006, Reddy & Reddy, Inc. decided to "cancel" its services agreement with SDTI and its "intended equity investment" in SDTI. (PLE p.188) The "information" from Mushtaq consisted *solely* of the California Department of Corporations complaint and the Pakistani criminal complaint mentioned above. (PLE p.188 ln.15-16, pp.190-207)

At the October 26, 2006 hearing on the motion, the trial court verbally denied Petitioner's motion in its entirety. (PLE p.295 ln.15-16, p.319 ln.4-5) [6] Again making a special appearance only, Petitioner then filed a motion to reconsider the ruling. (PLE pp.328-363) Petitioner later filed an affidavit in support of the motion to reconsider, attaching the documents in the Pakistani specific performance case adding SDTI (through Aftab Ali) as a litigant. (PLE pp.376-386) That motion was denied on January 18, 2007. (PLE p.451 ln.14-24, p.459 ln.1, p.461)

Mushtaq then filed a petition for writ of mandate or prohibition with the California Court of Appeal for the Fourth District, Division Three, asking that the

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[6] No written order concerning the October 26, 2006 ruling was ever signed. SDTI's notice of ruling is provided herein at Appendix, p.A-3.

Superior Court be directed to grant the motion to dismiss, stay and quash, or to refrain from conducting any further proceedings due to lack of jurisdiction,[7] but the writ petition was denied on April 5, 2007. (Appendix, p.A-4) Mushtaq then timely filed a petition for review with the California Supreme Court, but the petition for review was denied on May 23, 2007. (Appendix, p.A-3) Mushtaq now brings to this Court this petition for writ of certiorari.

ARGUMENT

I.

A non-resident's constitutionally-protected communication to a state agency should not constitute a "contact" which is sufficient to subject the non-resident to that state's court's exercise of personal jurisdiction.

This is a defamation action based on statements made on Mushtaq's behalf to the California Department of Corporations about a California corporation and the

[7] See *McIntire v. Superior Court*, 52 Cal.App.3d 717, 719, fn. 4 (1975).

existence of certain litigation pending in Pakistan concerning certain real property located in Pakistan. Mushtaq's statements constitute speech and a petition for redress of grievances. He is a Pakistani resident having no contacts with California, and asserts that the California case should have been dismissed due to defects in personal jurisdiction and service of process.

To comply with the 14th Amendment Due Process Clause, "in order to subject a defendant to a judgment in personam, if he be not present within the territory of the forum, he [must] have certain minimum contacts with it such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice." *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945). [8] The Due Process Clause requires that individuals have "fair warning that a particular activity may subject [them] to the jurisdiction of a foreign sovereign." *Shaffer v. Heitner*, 433 U.S. 186, 218 (1977) (STEVENS, J., concurring) [cited with approval in *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985) ("*Burger King*")].

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[8] A foreign citizen may assert the minimum contacts rule. See, *Asahi Metal Industry Co., Ltd. v. Superior Court*, 480 U.S. 102 (1987).

Furthermore,

> "Where a forum seeks to assert specific jurisdiction over an out-of-state defendant who has not consented to suit there, this 'fair warning' requirement is satisfied if the defendant has 'purposefully directed' his activities at residents of the forum [citation omitted], *and the litigation results from alleged injuries that 'arise out of or relate to' those activities.*" *Burger King*, 471 U.S. at 472-473 [emphasis added].

Here, SDTI's claim boils down to one relevant alleged contact between Mushtaq and California – the submission of the complaint form to the Department of Corporations, a communication that is protected by the First Amendment right to report true facts to the California agency having supervisory authority over SDTI. The First Amendment extends to aliens. *Bridges v. Wixon*, 326 U.S. 135, 148 (1945). Therefore, SDTI's claim *cannot* "relate to" or "arise out of" that contact, meaning that California's assertion of jurisdiction over Mushtaq violates due process.

In the lower courts, SDTI relied upon *Calder v. Jones*, 465 U.S. 783 (1984) ("*Calder*"), wherein this Supreme Court held that a California resident's suit for

defamation against the *National Enquirer* magazine, its editor and one of its reporters was permissibly venued in California, even though the defamatory article was written and edited in Florida before about 600,000 copies of it were published and distributed in California. This Court stated:

> "[P]etitioners are not charged with mere untargeted negligence. Rather, their intentional, and allegedly tortious, actions were expressly aimed at California. Petitioner South wrote and petitioner Calder edited an article that they knew would have a potentially devastating impact upon respondent. And they knew that the brunt of that injury would be felt by respondent in the State in which she lives and works and in which the *National Enquirer* has its largest circulation. Under the circumstances, petitioners must 'reasonably anticipate being haled into court there' to answer for the truth of the statements made in their article." *Calder*, 465 U.S. at 789-790.

The *Calder* litigation did not involve a statement made to a government agency, as the present case does. On the other hand, the *Calder* opinion states,

> "We also reject the suggestion that First

> Amendment concerns enter into the jurisdictional analysis. The infusion of such considerations would needlessly complicate an already imprecise inquiry. [citation omitted] Moreover, the potential chill on protected First Amendment activity stemming from libel and defamation actions is already taken into account in the constitutional limitations on the substantive law governing such suits. [citations omitted] To reintroduce those concerns at the jurisdictional stage would be a form of double counting." *Calder*, 465 U.S. at 790. [9]

This passage from *Calder* was made in the context of an allegedly libelous magazine article, *but the alleged libel in the present case was made to the California Department of Corporations, the government agency which exercises the State's supervisory authority over SDTI.* Therefore, this petition presents an issue of first impression to this Court, i.e., whether the latter rule from *Calder* applies to statements made to a government agency. In other words, Mushtaq is

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[9] Before *Calder*, the courts had held that "First Amendment considerations surrounding the law of libel require a greater showing of contact to satisfy the due process clause than is necessary in asserting jurisdiction over other types of tortious activity." *New York Times Co. v. Connor*, 365 F.2d 567, 572 (5th Cir. 1966).

being sued for making a report to a law enforcement agency, and a foreign citizen cannot "reasonably anticipate being haled into" a California court for making such a statement. [10]

The U.S. Circuit Courts of Appeals have interpreted *Calder* narrowly, so as not to cover constitutionally-protected communications to governmental agencies, due to the "threat to free public participation in government." *U.S. v. Ferrara*, 54 F.3d 825, 831 (D.C. Cir. 1995) [New Mexico resident not subject to personal jurisdiction in the District of Columbia merely because she sent a letter to the Justice Department in the District of Columbia]. Also, in *Michigan Coalition of Radioactive Material Users, Inc. v. Griepentrog*, 954 F.2d 1174 (6th Cir. 1992), the Michigan courts were held not to have personal jurisdiction over certain non-resident operators of radioactive waste disposal sites, though they had made telephone calls and sent letters to Michigan's governor and possibly certain Michigan legislators regarding the disposal of radioactive waste generated in Michigan.

The supreme courts of states other than California have also applied *Calder* narrowly. In

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[10] See also, CAL. CIV. CODE § 47(b).

Puhlman v. Turner, 874 P.2d 291 (Alaska 1994), the Alaska courts were held not to have personal jurisdiction over a non-resident parent in a child support modification case merely because he filed a petition in Alaska to enforce an out-of-state custody decree. See also, *Ex parte Dill, Dill, Carr, Stonbraker & Hutchings, P.C.*, 866 So.2d 519 (Alabama 2003), in which a Colorado law firm's blue sky filing with the Alabama security commission did not give rise to personal jurisdiction in Alabama. The appellate courts in California have also held that free speech "may not be defeated, or abridged, or chilled, by threat or fear of civil action for exercising it." *Dixon v. Superior Court*, 30 Cal.App.4th 733, 745 (1994).

For these reasons, good cause exists for this Supreme Court to review this case in order to address whether *Calder* extends to reports made to a government agency, and whether such a report may constitute the sort of "minimum contact" that is sufficient to support the exercise of personal jurisdiction over the person on whose behalf the report was made. In the interests of international and interstate comity, this Supreme Court should issue a writ of certiorari and declare that the First Amendment

is regarded so highly in this nation that the courts will not assume jurisdiction over a person merely because he or she engaged in protected speech. One's exercise of free speech should not be chilled by the threat of having to endure the rigors of civil litigation, even if he or she is ultimately vindicated on the merits.

II.

In the interests of comity with all Hague Convention member nations, strict compliance with the Hague Convention should be required whenever a non-resident who is a citizen of a member nation is haled into the courts of the United States or of one of the several states. [11]

At the time of the purported service of process upon Mushtaq in April 2006, Pakistan was a Hague Convention member state. *BP Product North America, Inc. v. Dagra*, 232 F.R.D. 263, 264 (E.D. Va. 2005). However, the summons and complaint were

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[11] Pursuant to *Burdette v. Rollefson Constr. Co.*, 52 Cal.2d 720, 725-726 (1959), and *Baker v. Walker & Walker, Inc.*, 133 Cal.App.3d 746, 755-756 (1982), this argument was first made to the California Court of Appeal, since the issue presents a question of pure law based on the undisputed facts that it was only an individual who not an official of the nation of Pakistan who attempted to deliver the summons and complaint to Petitioner.

indisputedly not served *by* Pakistan's central authority (PLE pp.21-22); SDTI only asserts that the summons and complaint were delivered "*at*" Pakistan's central authority, i.e., the court in Pakistan. On the other hand, the Hague Convention provides (at Articles 5 and 6) that it is the member nation's Central Authority which is to effectuate the service of documents upon persons within its territory. 20 U.S.T. 361.

In interpreting the treaty, this Supreme Court has held that "By virtue of the Supremacy Clause, U.S. Const., Art. VI, the Convention pre-empts inconsistent methods of service prescribed by state law in all cases to which it applies." *Volkswagenwerk Aktiengesellschaft v. Schlunk*, 486 U.S. 694, 699 (1988) ["*Volkswagenwerk*"]. This Court further held, "If the internal law of the forum state defines the applicable method of serving process as requiring the transmittal of documents abroad, then the Hague Service Convention applies." *Volkswagenwerk*, 486 U.S. at 700.

Here, the law of the forum state (California) not only requires the transmittal of documents abroad, it expressly mandates compliance with the Hague Service Convention. The California courts have held, "Failure

to comply with the Convention renders the service void, even if the defendant has actual notice of the lawsuit." *Floveyor International, Ltd. v. Superior Court*, 59 Cal.App.4th 789, 794 (1997) [hereinafter "*Floveyor*"]. [12]

In *Floveyor*, it was the signing and sealing of the certificate of service by the Senior Master's Department of the Supreme Court of England & Wales that constituted the requisite certification by Great Britain's Central Authority. However, here, there is no indication that Amer Ali is authorized to speak or act on behalf of Pakistan's Central Authority, meaning Amer Ali's signature on the "proof of service" is insufficient to show compliance with the Hague Convention, making the attempted service of process void.

There is nothing in *Volkswagenwerk* or the language of the Hague Convention authorizing the kind of substantial compliance approach asserted by SDTI. In speaking of the Hague Convention, this Court held, "Those who eschew its procedures risk discovering that the forum's internal law required transmittal of documents for service abroad, and that the Convention therefore provided the exclusive means of valid

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[12] See also, CAL. CIV. PROC. CODE § 413.10(c). Accord, *Brockmeyer v. May*, 383 F.3d 798 (9th Cir. 2004).

service." *Volkswagenwerk*, 486 U.S. at 706. On the other hand, the California courts applying *Volkswagenwerk* and interpreting the Convention have become divided and may support SDTI's argument. See *Kott v. Superior Court*, 45 Cal.App.4th 1126, 1136 (2d Dist. 1996) [and cases cited therein]; *In re Alyssa F.*, 112 Cal.App.4th 846 (4th Dist., Div. 1, 2003) [and cases cited therein]; and *Denlinger v. Chinadotcom Corp.*, 110 Cal.App.4th 1396 (6th Dist. 2003) [and cases cited therein].

Good cause therefore exists for this Supreme Court to review this case and issue a writ of certiorari directing the California Superior Court for the County of Orange to vacate its prior ruling and enter an order dismissing the case and/or to quash the purported service of process.

III.

Conclusion

For all of the above reasons, Petitioner Mohammad Ayub Mushtaq, upon special appearance only, requests that this Supreme Court issue a writ of certiorari to the Supreme Court of the State of California, directing that the Superior Court of

California, in and for the County of Orange, set aside and vacate the October 26, 2006 ruling denying Petitioner's motions, and enter a new order granting said motions in its stead.

Dated: October 11, 2007

Everett L. Skillman,
Counsel of Record
for Petitioner
Mohammad Ayub Mushtaq

APPENDIX A

May 23, 2007 Order of the California Supreme Court, case no. S151839

Court of Appeal, Fourth Appellate District, Div. 3, No. G038243

S151839

IN THE SUPREME COURT OF CALIFORNIA

En Banc

MOHAMMAD AYUB MUSHTAQ, Petitioner,

v.

SUPERIOR COURT OF ORANGE COUNTY,

Respondent;

SMART DIGITAL TECHNOLOGY, INC., Real Party in Interest.

The petition for review is denied.

SUPREME COURT
FILED
MAY 23 2007
Frederick K. Ohlrich
Clerk

Deputy

GEORGE
Chief Justice

APPENDIX B

April 5, 2007 Order of the California Court of Appeal, Fourth District, Division Three, case no. G038243

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION THREE

MOHAMMAD AYUB MUSHTAQ, Petitioner, v. THE SUPERIOR COURT OF ORANGE COUNTY, Respondent; SMART DIGITAL TECHNOLOGY, INC., Real Party in Interest.	G038243 (Super. Ct. No. 05CC12183) ORDER COURT OF APPEAL – 4TH DIST DIV 3 FILED APR 05 2007 Deputy Clerk

THE COURT:*

The petition for a writ of mandate/prohibition and request for immediate stay are DENIED.

RYLAARSDAM, J.

RYLAARSDAM, ACTING P.J.

*Before Rylaarsdam, Acting P.J., Aronson, J. and Ikola, J.

APPENDIX C

Notice of the October 26, 2006 ruling of the California Superior Court, in and for the County of Orange, case no. 05CC12183

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FILED
SUPERIOR COURT OF
CALIFORNIA
COUNTY OF ORANGE
WEST JUSTICE CENTER
OCT 30 2006
Alan Slater, Clerk of the Court
BY: /s/ , DEPUTY

E-mail: ttliu@tonyliulaw.com
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Attorney for Plaintiff
SMART DIGITAL TECHNOLOGY, INC.

THE SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF ORANGE -- WEST JUSTICE CENTER

SMART DIGITAL TECHNOLOGY, INC., a California corporation,
Plaintiff,

vs.

MOHAMMAD AYUB MUSHTAQ, an Individual, RAJA QURESHI, an Individual, MIAN FARASAT MAQSOOD, an Individual, SHAHAB SARKI, an Individual, IRFAN HAFEEZ CHOUDHARY, an Individual, MOHAMMAD AHMED, an Individual, and DOES 1 TO 20, inclusive,
Defendants.

Case No.: 05CC12183
[Assigned for All Purposes to: Hon. Mary Fingal Schulte, Judge Presiding Department: W11]

NOTICE OF RULING RE DEFENDANT MUSHTAQ'S (1) MOTION TO DISMISS; (2) MOTION FOR FORUM NON CONVENIENS; AND (3) MOTION TO QUASH SERVICE

By Fax
10/30/06

DATE: October 26, 2006
TIME: 1:30 P.M.
DEPT.: W11

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on October 26, 2006, at 1:30 p.m., the above-referenced matter came on for hearing before the Temporary Judge Presiding in Department @11 of the above-reference Court on Defendant Mohammad Ayub Mushtaq's MOTION TO DISMISS, OR ALTERNATIVELY TO STAY ACTION

FOR FORUM NON CONVENIENS, OR ALTERNATIVELY TO QUASH SERVICE FOR LACK OF JURISDICTION AND FAILURE TO SERVE. Tony T. Liu, Esq. appeared on behalf of Plaintiff Smart Digital. Ismail Amin, Esq. appeared as the Corporate Counsel for Plaintiff Smart Digital. Joe Hunter, Esq. appeared [sic] on behalf of Defendant Mohammad Ayub Mushtaq. No appearances made by the other defendants.

Upon review of the papers submitted, the Court ruled as follows:

1. The Defendant Mohammad Ayub Mushtaq's Motion to Dismiss case for lack of jurisdiction is denied.
2. The Defendant Mohammad Ayub Mushtaq's Motion to Stay Action for Forum Non Conveniens is denied without prejudice.
3. The Defendant Mohammad Ayub Mushtaq's Motion to Quash Service for Lack of Jurisdiction and Failure to serve is denied.
4. Defendant shall file ~~the Answer~~ a Response (*SK*)* within 30 days after the date of ruling.

Date: *10/30/2006*

LAW OFFICES OF TONY T. LIU

By: /s/
Tony T. Liu
Attorney for Plaintiff SMART DIGITAL TECHNOLOGY

**copy to be served on all parties. (SK)*

[proof of service by mail omitted; footer omitted; vertically printed text in left margin omitted]

APPENDIX D

The Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, 20 U.S.T. 361, T.I.A.S. No. 6638, Nov. 15, 1965, provides in pertinent part:

Article 1 states, "The present Convention shall apply in all cases, in civil or commercial matters, where there is occasion to transmit a judicial or extrajudicial document for service abroad. [¶] This Convention shall not apply where the address of the person to be served with the document is not known."

Article 5 states, "The Central Authority of the State addressed shall itself serve the document or shall arrange to have it served by an appropriate agency, either –

(a) by a method prescribed by its internal law for the service of documents in domestic actions upon persons who are within its territory, or

(b) by a particular method requested by the applicant, unless such a method is incompatible with the law of the State addressed.

Subject to sub-paragraph (b) of the first paragraph of this article, the document may always be served by delivery to an addressee who accepts it

voluntarily. [¶] If the document is to be served under the first paragraph above, the Central Authority may require the document to be written in, or translated into, the official language or one of the official languages of the State addressed. [¶] That part of the request, in the form attached to the present Convention, which contains a summary of the document to be served, shall be served with the document."

Article 6 states,

"The Central Authority of the State addressed or any authority which it may have designated for that purpose, shall complete a certificate in the form of the model annexed to the present Convention. [¶] The certificate shall state that the document has been served and shall include the method, the place and the date of service and the person to whom the document was delivered. If the document has not been served, the certificate shall set out the reasons which have prevented service. [¶] The applicant may require that a certificate not completed by a Central Authority or by a judicial authority shall be countersigned by one of these authorities. [¶] The

certificate shall be forwarded directly to the applicant."